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The Federal Supreme Court (F S C) has been convened on 23.1.2019 headed by the Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohammed Rijab AL-Kubaisi who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (mim.mim.mim.sad)/ the head of public prosecution/ being in this capacity – his agents (the deputy of public prosecution Head dhad.ha) and the official jurist (ain.fa.ha).

The Defendant: the Speaker of the ICR/ being in this capacity - his agents the jurist officials, the director (sin.ta.yeh) and the legal consultant assistant (ha.mim.sin).

### The Claim

The agent of the plaintiff claimed that the defendant/ being in this capacity had enacted the law of aggrieved compensation whom lost a part of their bodies because of the former regime behaviors No. (5 for 2009). While the article (4/2<sup>nd</sup>) of it contained a constitutional violation, he requested to reject it and to judge by unconstitutionality for the following reason: first: article (4) of the above-mentioned law in its first clause indicated to form a committee in every governorate headed by a Judge whom named by the Head of the Higher Judicial Council, and membership of two representatives from Ministries and the following offices. Their posts are not less than a Director (the Ministry of health, the Ministry of finance, the Ministry of labor and social affairs, the

Ministry of municipality and representative of the governorate). Second: these committees takes decisions about the compensation requests, later on these decision shall be referred to the governor for approval. By reviewing the text of the second clause above-mentioned of article (4). The legislator wanted to grant the legitimate capacity for the committee's decisions by approving it from the governor, in spite of that the governor represent the executive power. He neglected the principle of separation between powers which listed in articles (19 & 47) of the Constitution, and he also violated the text of article (88) of it which indicated that (Judges are independent, and there is no authority over them except that of the law. No power shall have the right to interfere in the judiciary and the affairs of justice). Whereas article (4/2<sup>nd</sup>) of the law contained in its texts a constitutional violations, and these violations will interfere the tasks of the judicial power. Therefore, he requested from the FSC to reject the article (4/2<sup>nd</sup>) of the law (challenge subject) because it violates the constitutional texts (19, 47, 88) of the Republic of Iraq Constitution for 2005 according to article (93/3<sup>rd</sup>) of it. He also requested to burden his the expenses and advocacy fees. The agents of the defendant answered the petition of the case with and answering draft dated on (5.11.2018), and they requested to reject the case with burdening the plaintiff its expenses because the formed committee according to the law didn't describe by the judicial committee, even if it had been headed by a Judge whom named by the Head of the Higher Judicial Council. Therefore, the decision issued by the committee doesn't have the power of a decision or judicial judgment, it is closer to be considered an administrative decision and what confirms this matter that the committee includes a membership of representatives from the Ministries and other executive offices named by the law. The decision of the committee is challengeable before the same committee (if rejected) and the decision of the committee of the aggrieving is challengeable before the first instance Court, as well as before the appeal Court with its cassation capacity. What issues from this committee is Judicial judgment, and it has the plea in what it's includes over everyone. The law didn't indicates to the approval of the governor on the judgment issued by the aforementioned Court, but only the committee's decision. The

difference between the two matters is very clear. The Court had set a date for argument, and the set day the Court has been convened and the agent of the plaintiff attended Mr. (ain.fa) according to his private power of attorney dated on 16.1.2019 No. (845) which attached to the case's dossier. The agents of the defendant attended as well each of the jurist officials, the director (sin.ta.yeh) and the legal consultant assistant (ha.mim.sin) according to their power of attorney which attached to the case's dossier. The public in presence argument proceeded, the agent of the plaintiff repeated what listed in the petition of the case and he requested to judge according to it, with burdening the defendant its expenses and the advocacy fees. The agents of the defendant repeated what listed in their answering draft, and they requested to reject the case with burdening the plaintiff its expenses and advocacy fees. Each party repeated its sayings and previous requests, and they requested to judge according to it. Whereas nothing left to be said, the end of the argument has been made clear.

### The Decision

During scrutiny and deliberation by the FSC, the Court found that the plaintiff/ being in this capacity is challenging unconstitutionality of clause (2<sup>nd</sup>) of article (4) of aggrieved compensation law whom lost part of their bodies because of former regime behaviors No. (5) For 2009. He pretended that it's violates the provisions of articles (19, 47, 88) of the Constitution, while article (4/2<sup>nd</sup>) of the aforementioned law adjudge by forming a committee in every governorate headed by a Judge and membership of representatives have the post of Director. Those representatives shall be from the Ministries of Health, Finance, labor and social affairs and municipalities to take decisions in compensations requests. Its decisions shall be referred to the governor for approval, and this matter is violates the principle of separation between powers, as well as the Judiciary independence and it also interfere the Judiciary power tasks. The FSC after scrutinizing the formations of the aforementioned committee that it must be formed and headed by a Judge, and membership of five civil employees with posts not less than a Director. Those employee are representatives of above-mentioned Ministries, and

its task is to take decisions about compensation requests. The vote of the Judge in this committee is equal to the votes of the other members, and this task is not within the core of the judicial jurisprudence which take decisions about quarrels between litigants. Its task with an administrative nature, therefore, its decisions doesn't considered pure judicial decisions which the law of judicial and civil procedure determine the methods of challenging it. Therefore, the text (challenge subject) doesn't intersects with the constitutional articles which listed in the petition of the case. This matter is what the FSC proceeded to in a previous judgment in the case (32/federal/2015) issued on 10.8.2015. Accordingly, while the case is lacking its constitutional substantiation, the Court decision to reject it, and to burden the plaintiff/ being in this capacity the expenses and advocacy fees amount of (one hundred thousand Iraqi dinars). The decision has been issued unanimously and decisively according to article (94) of the Constitution, and article (5) of the FSC's law No. (30) For 2005. The decision has been made clear on 23.1.2019.